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COURT OF CRIMINAL APPEALS
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NO. PD-0941-17

IN THE COURT OF CRIMINAL APPEALS

OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
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DEANA WILLIAMSON, CLERK

CHRISTIAN VERNON SIMS, Appellant

V.

THE STATE OF TEXAS

ON DISCRETIONARY REVIEW OF CAUSE NO. 06-16-00198-CR;
SIXTH JUDICIAL DISTRICT COURT OF APPEALS AT TEXARKANA;
CAUSE NO. 26338; SIXTH DISTRICT COURT OF LAMAR COUNTY

STATE'S BRIEF ON THE MERITS

Jeffrey W. Shell
Attorney Pro Tem
Attorney & Counselor at Law
P.O. Box 397
Rockwall, TX 75087-0397
(214) 244-8480
(972) 204-6809 (fax)

Gary D. Young
Lamar County and District Attorney
Lamar County Courthouse
119 North Main
Paris, Texas 75460
(903) 737-2470
(903) 737-2455 (fax)

ATTORNEYS FOR STATE OF TEXAS

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Tex. R. App. P. 38.2(a)(1)(A), the list of parties and counsel is not required to supplement or correct the appellant's list.

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STATEMENT OF THE CASE

This is a murder case involving the victim, Annie Sims, and two suspects: Christian Vernon Sims (Sims) and his girlfriend, Ashley Morrison (Morrison). *See* Tex. Penal Code Ann. § 19.02(b) (West Supp. 2017).

After the denial of his various motions to suppress evidence, Sims reached a plea agreement with the State of Texas (the State), in which, he entered a plea of guilty and received a sentence of thirty-five (35) years confinement in the Institutional Division of the Texas Department of Criminal Justice (TDCJ-ID). *See* RR, Vol. 4, pgs. 4, 17. Sims reserved the right to appeal the denial of his motions to suppress (RR, Vol. 4, pgs. 4, 17), and he timely perfected his appeal by filing a notice of appeal (CR, pgs. 414-415) from the trial court's final judgment of conviction. *See* CR, pgs. 421-422.

On direct appeal, the court of appeals affirmed the trial court's final judgment. *See Sims v. State*, 526 S.W.3d 638, 641 (Tex. App.--Texarkana 2017, pet. granted). Sims timely filed his petition for discretionary review, which raised three (3) grounds.

This Court granted the appellant's petition for review as to grounds one (1) and two (2).

STATEMENT REGARDING ORAL ARGUMENT

As the appellant (Sims) correctly stated in his brief on the merits, this Court did not permit oral argument.

GROUNDS IN REPLY

REPLY TO GROUND NO. 1: THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE TRIAL COURT'S FINAL JUDGMENT OF CONVICTION BECAUSE THE APPELLANT (SIMS) COULD NOT ESTABLISH ANY VIOLATION(S) OF TWO STATUTES: (1) THE STORED COMMUNICATIONS ACT AND (2) ARTICLE 18.21 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.

REPLY TO GROUND NO. 2: THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE TRIAL COURT'S FINAL JUDGMENT OF CONVICTION BECAUSE THE APPELLANT (SIMS) COULD NOT MEET THE REASONABLE-EXPECTATION-OF-PRIVACY TEST.

NO. PD-0941-17

IN THE COURT OF CRIMINAL APPEALS

OF TEXAS

CHRISTIAN VERNON SIMS, Appellant

V.

THE STATE OF TEXAS

ON DISCRETIONARY REVIEW OF CAUSE NO. 06-16-00198-CR;
SIXTH JUDICIAL DISTRICT COURT OF APPEALS AT TEXARKANA;
CAUSE NO. 26338; SIXTH DISTRICT COURT OF LAMAR COUNTY

STATE'S BRIEF ON THE MERITS

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW, the State of Texas (the State), by and through Gary D. Young, the elected County and District Attorney of Lamar County, and Jeffrey W. Shell, *Attorney Pro Tem*, respectfully submits the State's Brief on the Merits under Rule 70.2 of the Texas Rules of Appellate Procedure.

References to the Reporter's Record are referred to as "RR," followed by the volume number and corresponding page number(s). References to the Clerk's Record are referred to as "CR" followed by the page number(s).

STATEMENT OF FACTS

Factual Background: Police Investigation of a Murder in Lamar County.

The opinion of the court of appeals accurately reflected the factual background of the present case, beginning with the following:

> Early in the afternoon of December 18, 2014, the body of Annie Sims was discovered on the back porch of her Powderly, Texas, home with a bullet in her head. Missing were Annie's live-in grandson, Christian Vernon Sims (Sims), his girlfriend, Ashley Morrison, Annie's vehicle, and Annie's purse, its contents including credit cards and at least one handgun. Officers suspected that the missing couple caused Annie's death and had taken the missing items from Annie's house. The officers' investigation was assisted by Sims' grandfather and Annie's husband, Mike Sims, as well as Sims' father, Matt.

See Sims, 526 S.W.3d at 640.

Jeff Springer, a deputy with the Lamar County Sheriff's Office, (Deputy Springer) left the crime scene to go to the office to see about getting a phone "pinged." *See* RR, Vol. 2, pg. 74. When he got to the office, Sergeant Steve Hill (Sergeant Hill) was already having it "pinged." *See* RR, Vol. 2, pg. 74.

Sergeant Hill, who actually just stopped by the office, had done some "pings" in the past for mental subjects, like runaways and one abduction. *See* RR, Vol. 2, pgs. 115, 120. Sergeant Hill talked to Robert White at Verizon. *See* RR, Vol. 2, pg. 121. Sergeant Hill "got the form from

Verizon." *See* RR, Vol. 2, pg. 115. The local store sent Sergeant Hill the form, and he filled it out and faxed it back to them. *See* RR, Vol. 2, pgs. 115, 119-121, 123, 130-131.

As the requesting officer, Sergeant Hill completed and signed the "Emergency Situation Disclosure" form.[1] *See* Appendix (State's Exhibit 4B). The completed form was assigned Case # 141934294 with an Analyst Name of "Robert W." at a date and time of 12/18/2044 17:49 EST. *See* Appendix (State's Exhibit 4B). The form requested the type of records by a check mark: "Location Information" with the time frame as "current." *See* Appendix (State's Exhibit 4B). The form provided an email address for Sergeant Hill at the Lamar County Sheriff's Office. *See* Appendix (State's Exhibit 4B).

Sergeant Hill actually received information back from both of their phones for the appellant (Sims) and Ashley Morrison (Morrison).[2] *See* RR, Vol. 2, pg. 115. The appellant's phone was originally "pinged" on a highway in Oklahoma headed northbound. *See* RR, Vol. 2, pg. 116. *See also* RR, Vol. 2, pgs. 126-127. The first ping came in, and it was a few

[1] *See, e.g., Alexander v. Verizon Wireless Servs., L.L.C.,* 875 F.3d 243, 247 (5th Cir. 2017) (a Verizon representative sent the detective an "Emergency Situation Disclosure" form, which the detective filled out and returned to Verizon).

[2] Morrison's phone showed to be "pinging" in Paris at several locations, but it was ruled out as a "false ping." *See* RR, Vol. 2, pg. 116.

miles away from where Annie's credit card was charged, just north of it. *See* RR, Vol. 2, pg. 116. *See also Sims*, 526 S.W.3d at 640. A law enforcement agency missed them there. *See* RR, Vol. 2, pg. 117. Sergeant Hill contacted the next law enforcement agency and missed them there. *See* RR, Vol. 2, pg. 117. There was a total of three law enforcement agencies that Sergeant Hill called. *See* RR, Vol. 2, pg. 124.

Eventually, law enforcement had a "ping" across the street from a motel. *See* RR, Vol. 2, pg. 117. The actual "ping" showed it to be at a truck stop across the Interstate for the GPS location. *See* RR, Vol. 2, pg. 118. Sergeant Hill was sending law-enforcement officers to the truck stop looking for the vehicle, and they called back to say they were checking the area and located Annie's vehicle at a motel. *See* RR, Vol. 2, pg. 118.

On December 18, 2014, Deputy Steven Funk (Deputy Funk) received from dispatch information regarding a "BOLO" (be-on-look-out) for two murder suspects. *See* RR, Vol. 2, pgs. 54-55. Deputy Funk "received information from another agency saying that they had pinged a cell phone of the suspects." *See* RR, Vol. 2, pg. 55.

"A Creek County deputy located the vehicle at one of the motels in [the] area." *See* RR, Vol. 2, pg. 55. That deputy was Brittany Hale. *See* RR, Vol. 2, pg. 56. Twenty (20) to 25 officers went to the motel. *See* RR, Vol. 2,

pg. 21. The scene was secure. *See* RR, Vol. 2, pgs. 58-59.

Deputy Jason Deloache (Deputy Deloache) went to the motel and located the vehicle. *See* RR, Vol. 2, pg. 22. Officers "used the tag from the vehicle at the office to determine which room they were in." *See* RR, Vol. 2, pg. 22.

Deputy Deloache called the hotel room (RR, Vol. 2, pg. 24) and had one conversation with Sims. *See* RR, Vol. 2, pgs. 24, 27. During that conversation, Sims told Deputy Deloache there was a female in the room, who was later identified as Morrison. *See* RR, Vol. 2, pgs. 28-29. Sims also told Deputy Deloache that he had a gun. *See* RR, Vol. 2, pgs. 33-34. Deputy Deloache wanted him to leave the gun on the table in the room. *See* RR, Vol. 2, pg. 35.

Morrison came out of the room first. *See* RR, Vol. 2, pgs. 29, 59. Deputy Funk placed her in handcuffs. *See* RR, Vol. 2, pg. 59. Morrison was arrested. *See* RR, Vol. 2, pgs. 31, 60-61, 64.

Sims came out second. *See* RR, Vol. 2, pg. 61. When Sims came out of the room, Deputy Deloache walked up to Sims and introduced himself, and was basically thanking him for a peaceful solution. *See* RR, Vol. 2, pg. 32. Deputy Funk, who had two sets of handcuffs, was placed in handcuffs. *See* RR, Vol. 2, pg. 62. Although the deputies did not have a warrant to

arrest at that time (RR, Vol. 2, pg. 28), Sims was arrested without a warrant. *See* RR, Vol. 2, pgs. 31, 35-37, 49, 61, 63-65.

Procedural Background: A Grand Jury Returned Indictments That Charged Sims and Morrison with Murder.

On March 12, 2015, a grand jury in Lamar County returned an original indictment that charged Morrison with the first-degree felony offense of murder in cause number 26166.[3] *See* Tex. Penal Code Ann. § 19.02(b) (West Supp. 2017). On July 27, 2015, a grand jury in Lamar County returned an original indictment that charged Sims with the felony offense of murder. *See* CR, pg. 182; Tex. Penal Code Ann. § 19.02(b) (West Supp. 2017).

In due course, Sims filed his motion to suppress evidence on or about August 31, 2015. *See* CR, pgs. 240-241. On September 27, 2016, the trial court conducted a one-day suppression hearing. *See* RR, Vol. 2, pgs. 1-139. At a later date, the trial court denied the motion to suppress (RR, Vol. 4, pg. 4), and signed a written order on October 14, 2016. *See* CR, pgs. 390-391.

[3] After a jury trial, a jury in Smith County--where venue was changed--found Morrison guilty of the offense of murder, as charged in the indictment. The jury assessed punishment at confinement in the Texas Department of Criminal Justice, Institutional Division, for a term of thirty (30) years with a fine of zero. Morrison timely perfected her appeal to the Sixth Judicial District Court of Appeals at Texarkana, where cause number 06-17-00159-CR awaits submission for oral argument.

Plea Bargain, Notice of Appeal and Final Judgment.

On or about October 18, 2016, Sims reached a plea agreement with the State, in which, he received a sentence of thirty-five (35) years confinement in the Institutional Division of the Texas Department of Criminal Justice with credit for all the time in custody in the State of Oklahoma. *See* RR, Vol. 4, pgs. 4, 17. In addition, Sims reserved the right to appeal the denial of his motion to suppress. *See* RR, Vol. 4, pgs. 4, 17.

At the time of the October 18th plea, the trial court signed its Certification of the Right of Appeal. *See* CR, pg. 407. On the same day of October 18th, Sims filed his notice of appeal. *See* CR, pg. 414-415. On October 27th, the trial court signed its "Judgment of Conviction—Waiver of Jury Trial." *See* CR, pgs. 421-422.

Procedural Background On Appeal.

Sims timely perfected his appeal to the Sixth Judicial District Court of Appeals at Texarkana by filing a notice of appeal (CR, pgs. 414-415) from the trial court's final judgment of conviction for the felony offense of murder. *See* CR, pgs. 421-422. The respective parties filed their briefs in the court of appeals, which did not grant oral argument.

On July 20, 2017, the Court of Appeals signed its judgment, which affirmed the judgment of the trial court in a published opinion. *See Sims v.*

State, 526 S.W.3d 638, 641, 646 (Tex. App.--Texarkana 2017, pet. granted). Neither party filed a motion for rehearing.

On or about October 31, 2017, Sims filed his petition for discretionary review. On or about February 14, 2018, this Court granted the petition for discretionary review as to grounds one (1) and two (2), but did not grant oral argument.

On April 3, 2018, Sims filed his brief in this Court. The State will be filing its brief on or before the due date of May 3, 2018.

SUMMARY OF THE ARGUMENT

In summary, this Court need not decide whether Article 38.23(a) of the Texas Code of Criminal Procedure provided "broader" protection, and his grounds for review should be rejected for two reasons: First, Sims could not establish any violation of either (a) 18 U.S.C. §§ 2701-2712 (2016) or (b) Tex. Code Crim. Proc. Ann. art. 18.21 (West 2015; West Supp. 2017).

More specifically, (a) Sims could not establish any violation(s) of the Stored Communications Act (SCA) because 18 U.S.C. § 2707(e) provided a statutory authorization that established a complete and affirmative defense for Verizon. Equipped with State's Exhibit 4B (*see* Appendix), Verizon acted reasonably in concluding that there was "an emergency involving danger of death or serious physical injury to [a] person" that required Verizon to act without delay, in satisfaction of 18 U.S.C. § 2702(c)(4).

(b) Sims could not establish any violation(s) of Article 18.21 of the Texas Code of Criminal Procedure because section 11(c)(7) provided a similar "statutory authorization," just like the provision in the "parallel" SCA. Without any violation(s) of either Article 18.21 or 18 U.S.C. §§ 2701-2712 (2016), Article 38.23(a) was not invoked.

Second, Sims could not meet the reasonable-expectation-of-privacy test. Therefore, the appellate court's final judgment should be affirmed.

ARGUMENT AND AUTHORITIES

REPLY TO GROUND NO. 1: THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE TRIAL COURT'S FINAL JUDGMENT OF CONVICTION BECAUSE THE APPELLANT (SIMS) COULD NOT ESTABLISH ANY VIOLATION(S) OF TWO STATUTES: (1) THE STORED COMMUNICATIONS ACT AND (2) ARTICLE 18.21 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.

Article 38.23(a) of the Texas Code of Criminal Procedure provided the following:

> (a) No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

See Tex. Code Crim. Proc. Ann. art. 38.23(a) (West 2005).

In his brief, Sims alleged violations of two (2) specific statutes. *See* Appellant's Brief, pg. 21. Before the general exclusionary remedy in Article 38.23(a) can be invoked, however, a court must identify a constitutional violation. *See Albert Leslie Love, Jr. v. The State of Texas*, No. AP-77,024, 2016 Tex. Crim. App. LEXIS 1445, at * 19, n. 8, 2016 WL 7131259, at * 7, n. 8 (Tex. Crim. App. Dec. 7, 2016) (not designated for publication) ("Before we may invoke the general exclusionary remedy embodied in Article 38.23, therefore, we must identify . . . a constitutional violation.").

A. **Sims Could Not Establish Any Violation of Two Statutes.**

1. **Sims Could Not Establish Any Violation of the Stored**

Communications Act (SCA) Under 18 U.S.C. §§ 2701-2712 (2016).

(a) **Facts in *Alexander*, 875 F.3d 243 (5th Cir. 2017).**

In *Alexander*, two homeowners in Louisiana called the police to report a fire at their house as an arson. *See id* at 246. A detective from the Sheriff's Department arrived at the home, where the homeowners told the detective that they believed Matthew Edward Alexander (Alexander), a former employee, was responsible for the fire. *See id*. Later that day, the detective spoke with a representative from Verizon Wireless Services, L.L.C. (Verizon), the service provider for the cell phone for Alexander. *See id*.

The representative from Verizon sent the detective an "Emergency Situation Disclosure" form, which the detective filled out and returned to the representative. *See id*. at 247. The form included a question asking whether the request "potentially involve[s] the danger of death or serious bodily injury to a person, necessitating the immediate release of information relating to the emergency." *See id*. In response, the detective checked the box next to "yes." *See id*. The detective signed the form under a certification stating as follows: "I certify that the foregoing is true and correct and understand that Verizon Wireless may rely upon this form to make an emergency disclosure to my law enforcement agency or

governmental entity pursuant to 18 U.S.C. § 2702(b)(8)[4] and § 2702(c)(4).[5]" *See id*.

After receiving the completed form, Verizon provided the detective with the requested information. *See id*. Based in part on the information from Verizon, Alexander was arrested and charged with aggravated arson and two counts of attempted second degree murder. *See id*.

Proceeding *pro se*, Alexander filed a lawsuit in a federal district court in the Western District of Louisiana, alleging violations of the Stored Communications Act (SCA), 18 U.S.C. §§ 2701-2711, and seeking damages. *See Alexander*, 875 F.3d at 248. Verizon filed a motion to dismiss for failure to state a claim upon which relief could be granted. *See id*. A magistrate judge concluded that dismissal was proper, and the district court dismissed Alexander's lawsuit with prejudice. *See id*. Alexander then timely appealed the district court's judgment. *See id*.

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[4] Section 2702(b), entitled "Exceptions for disclosure of communications[,]" provided that "[a] provider described in subsection (a) may divulge the contents of a communication--(8) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious bodily injury to any person requires disclosure without delay of communications relating to the emergency." *See* 18 U.S.C. § 2702(b)(8) (2016).

[5] Section 2702(c)(4), entitled "Exceptions for disclosure of customer records[,]" provided that "[a] provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))--(4) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency." *See* 18 U.S.C. § 2702(c)(4) (2016).

(b) **Holding in *Alexander*, 875 F.3d 243 (5th Cir. 2017).**

In *Alexander*, the Fifth Circuit Court of Appeals affirmed. *See id* at 246, 256. In affirming, albeit in the context of a civil case, the court reasoned that a provision of the SCA provided additional protection to service providers who followed the terms of a statutory authorization in the form of a complete defense. *See id* at 250. In *Alexander*, the court relied on section 2707(e), a statutory authorization, that stated:

> A [service] provider . . . may divulge a record or other information pertaining to a subscriber to or a customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2) . . . To a governmental entity, if the provider, in good faith, believes that an emergency involving danger or serious physical injury to any person requires disclosure without delay of information relating to the emergency . . . .

See Alexander, 875 F.3d at 251.

In *Alexander*, the court applied an objective standard to the good faith requirement in sections 2702(c)(4) and 2707(e)(1) of the SCA, and asked if Verizon's conduct was objectively reasonable. *See id* at 254. In *Alexander*, the court resolved that this approach was consistent with the opinion of two other circuits and found support in the reasoning of the third circuit. *See id*.

In *Alexander*, the court concluded that "Verizon acted in an objectively reasonable manner." *See id* (reference to footnote omitted). It was undisputed that Verizon only released the non-content information tied

to Alexander's cell phone number after it received a signed and certified form indicating that the request involved: (1) "the danger of death or serious physical injury to a person, necessitating the immediate release of information relating to that emergency," (2) an alleged arson, and (3) victims who were within the home when it was set on fire. *See id*. In *Alexander*, the court also concluded that the government official, who submitted the form, listed identifying information, such as his badge number and title as senior investigator with the Sheriff's Department, making it reasonable for Verizon to rely on its contents. *See id*.

Equipped with this form, the court held in *Alexander* that Verizon acted reasonably in concluding that there was "an emergency involving danger of death or serious physical injury to [a] person" that required Verizon to act without delay, in satisfaction of § 2702(c)(4). *See Alexander*, 875 F.3d at 254. In *Alexander*, the court held that an affirmative defense was established on the face of Alexander's complaint. *See id*. In other words, Alexander could not establish any violation of the SCA. *See id* at 255-56.

(c) **Application of Law to the Present Case.**

(1) **State's Exhibit 4B.**

The "Emergency Situation Disclosure" form in *Alexander* was identical to the form in the present case. *See* Appendix (State's Exhibit 4B). Here, Sergeant Hill testified that he "got the form from Verizon." *See* RR, Vol. 2, pg. 115. The local store sent Sergeant Hill the form, and he filled it out and faxed it back to them. *See* RR, Vol. 2, pgs. 115, 119-121, 123, 130-131. State's Exhibit 4B asked, "Does this request potentially involve the danger of death or serious bodily injury to a person, necessitating the immediate release of information relating to that emergency?" *See* Appendix (State's Exhibit 4B). As in *Alexander*, 875 F.3d at 247, Sergeant Hill checked the box next to "yes." *See* Appendix (State's Exhibit 4B). From State's Exhibit 4B, Sergeant Hill also checked the box next to "Location Information" for the "Type of Records Being Requested" with the Time Frame for Which Information is Requested" as "Current." *See* Appendix (State's Exhibit 4B).

Further, State's Exhibit 4B provided the name of "Sgt Hill" and identified the Law Enforcement Agency as "Lamar County Sheriff's Dept" with an address, phone number and fax number. *See* Appendix (State's Exhibit 4B). The form provided an email address for Sergeant Hill. *See*

Appendix (State's Exhibit 4B). Finally, as in *Alexander*, Sergeant Hill signed State's Exhibit 4B under a certification stating as follows: "I certify that the foregoing is true and correct and understand that Verizon Wireless may rely upon this form to make an emergency disclosure to my law enforcement agency or governmental entity pursuant to 18 U.S.C. § 2702(b)(8) and § 2702(c)(4)." *See* Appendix (State's Exhibit 4B); *Alexander*, 875 F.3d at 247.

(2) **Sims Could Not Establish Any Violation of the SCA.**

Here, as in *Alexander*, this Court should construe section 2707(e) as a statutory authorization that provided Verizon with a complete and affirmative defense. In applying an objective (not subjective) standard to the good faith requirement in sections 2702(c)(4) and 2707(e)(1) of the SCA, this Court should hold that Verizon acted in an objectively reasonable manner in releasing the "location information" to the appellant's cell phone. *See Alexander*, 875 F.3d at 254. As in *Alexander*, it was similarly undisputed that Verizon only released the non-content information tied to the appellant's cell phone number after it received a signed and certified form indicating with an affirmative "yes" (State's Exhibit 4B) that the request "potentially involve[d] the danger of death or serious physical injury to a person, necessitating the immediate release of information relating to that

emergency." *See id*. Equipped with State's Exhibit 4B, Verizon acted reasonably in concluding that there was "an emergency involving danger of death or serious physical injury to [a] person" that required Verizon to act without delay, in satisfaction of § 2702(c)(4). *See id*.

Because an affirmative defense was established on the face of Alexander's complaint, it should translate that Sims could not establish any violation of the SCA for purposes of Article 38.23(a) of the Texas Code of Criminal Procedure. *See Alexander*, 875 F.3d at 254. Just as equally, Sergeant Hill (and other peace officers with the Lamar County Sheriff's Department), who were equipped with the "statutory authorization" in State's Exhibit 4B, did not violate the SCA by "pinging" the appellant's cell phone without a warrant to determine non-content "location" information. *See id*; 18 U.S.C. § 2702(b)(8) and § 2702(c)(4) (2016). *See also Ford v. State*, 477 S.W.3d 321, 331 (Tex. Crim. App. 2015) ("[t]his type of non-content evidence, lawfully created by a third-party telephone company for legitimate business purposes, does not belong to [the defendant], even if it concerns him."). Therefore, the appellant's arguments as to any alleged violation(s) of the SCA should fail.

2. **Sims Could Not Establish Any Violation of Article 18.21 of the Texas Code of Criminal Procedure.**

(a) **Article 18.21 § 11(c) of the Texas Code of Criminal**

Procedure Provided a "Statutory Authorization," As Did the Federal Statute.

Article 18.21, § 11(c)(7) of the Texas Code of Criminal Procedure provided in pertinent part that "[a] provider of an electronic communications or remote computing service may divulge the contents of an electronically stored communication: . . . (7) as authorized under federal or other state law." *See* Tex. Code Crim. Proc. Ann. Art. 18.21, § 11(c)(7) (West 2015; West Supp. 2017). As applicable here, Sims could not establish any violation of Article 18.21 of the Texas Code of Criminal Procedure because federal law authorized disclosure of short-term CSLI under either 18 U.S.C. § 2702(b)(8) or 18 U.S.C. § 2702(c)(4) (2016). *See* Tex. Code Crim. Proc. Ann. Art. 18.21, § 11(c)(7) (West 2015; West Supp. 2017).

Here, this Court should construe Article 18.21, § 11(c)(7) in a manner that paralleled the federal law because, otherwise, sub-section (c)(7) has no meaning through its specific use of the words, "as authorized under federal [] law." *See* Tex. Code Crim. Proc. Ann. Art. 18.21, § 11(c)(7) (West 2015; West Supp. 2017). Second, both the federal and state provisions provided a "statutory authorization" and used the same words, like "a provider" and "may divulge." *Compare* Article 18.21, § 11(c) (West 2015; West Supp. 2017) *with* 18 U.S.C. § 2707(e) (2016).

Finally, such a statutory construction by this Court would be

consistent with the approach by the court of appeals in *Sims*, when it referred to Article 18.21 as "[p]arallel to the SCA. *See Sims*, 526 S.W.3d at 642. Under such a statutory construction, it would be inconsistent to hold that Verizon's conduct was objectively reasonable under the federal statute--as in *Alexander*, 875 F.3d at 251--but was objectively unreasonable under the "parallel" state statute. For the reasons above, the appellant's arguments as to any alleged violation(s) of Article 18.21 should similarly fail.

(b) ***Ford*, 477 S.W.3d at 322.**

In *Ford*, this Court held that the State did not violate the appellant's rights when it acquired four days worth of historical cell-site-location information by way of a court order under Article 18.21 § 5(a) of the Texas Code of Criminal Procedure. *See Ford*, 477 S.W.3d at 322. That specific provision provided that:

> A court shall issue an order authorizing disclosure of contents, records, or other information of a wire or electronic communication held in electronic storage if the court determines that there is reasonable belief that the information sought is relevant to a legitimate law enforcement inquiry.

Ford, 477 S.W.3d at 325, n. 4. Here, the State did not violate Sims' rights.

(a) **Facts in *Ford*, 477 S.W.3d at 322-28.**

Jon Thomas Ford (Ford) and the murder victim, Dana Clair Edwards (Dana Clair), started dating in 2007. *See id.* By mid-summer 2008, they

were drifting apart. *See id*. But, they wanted to remain friends, and their paths continued to cross. *See id* at 323.

On New Year's Eve in 2008, the appellant (Ford) and Dana Clair were at a party, where they played a game called "Apples to Apples." *See id*. During the game, the appellant became slightly irritated when another friend (Melissa Federspill) made "a fuss" regarding the appellant's relationship with Dana Clair. *See id*.

This "fuss" lead to a break in the game, and Ford left before midnight. *See id*. Alan Tarver (Tarver), the appellant's lifelong friend, sent a text message asking appellant why he left. *See id*. Ford replied, "No longer fun." *See id*. Once home, Tarver tried to contact Ford one last time, sending him a text. *See id* at 323-24. On the next morning, Ford had a light-hearted text exchange with Tarver. *See id* at 324.

On New Year's Day, Dana Clair's parents expected her out at their ranch in Fredericksburg. *See id*. The parents called her throughout the day, but were never able to reach her. *See id*. They drove from the ranch to Dana Clair's condo and found their daughter dead. *See id*. The police believed it was a homicide, and a detective with the San Antonio Police Department was assigned the case on January 2, 2009. *See id*.

On January 14th, the District Attorney's Office in San Antonio filed an

application under Article 18.21 § 5(a) of the Texas Code of Criminal Procedure for four (4) days worth of historical cell-site-location information (CSLI) for the appellant's cell phone from AT&T Wireless. *See id* at 325. Kenneth Doll (Doll), the director of radio network engineering for the AT&T Wireless Network in South Texas, testified that the network collected cell-phone data even when someone was not actively using his or her cell phone. *See id* at 325-26. According to Doll, unanswered texts/calls and automatic internet downloads/uploads cause the device to connect with, or "ping," the network to alert the network that the cellular device was in a particular service area. *See id* at 326.

Ultimately, a jury found the appellant (Ford) guilty of murder and sentenced him to confinement for forty (40) years. *See id* at 327. Among the issues raised and rejected on direct appeal was an argument that focused on admission of the historical cell-site-location information obtained from AT&T and used by the State to suggest the appellant's proximity to Dana Clair's residence at the time of her murder. *See id*.

A majority of the court of appeals held that the government's procurement of the data at issue was not an unreasonable search. *See id* at 328 (citing *Ford v. State*, 444 S.W.3d 171, 190 (Tex. App.--San Antonio 2014)). This Court granted review, and affirmed. *See Ford*, 477 S.W.3d at

322, 335.

(b) **Holding in *Ford*, 477 S.W.3d at 330-35.**

In affirming, this Court agreed with the court of appeals that the State's receipt of four (4) days worth of historical cell-site-location information under Article 18.21, § 5(a) did not violate the Fourth Amendment. *See Ford*, 477 S.W.3d at 330 (citing *Ford*, 444 S.W.3d at 190; *Barfield v. State*, 416 S.W.3d 743, 749 (Tex. App.--Houston [14th Dist.] 2013, no pet.)). In *Ford*, this Court reasoned that (1) the appellant neither owned nor possessed the records he sought to suppress, and (2) the appellant could not meet the reasonable-expectation-of-privacy test.[6] *See Ford*, 477 S.W.3d at 330-31.

In *Ford*, this Court also agreed with the court of appeals that the appellant "voluntarily availed himself of AT&T's cellular service, which include[d] the ability to receive data sent to a subscriber's phone, when he chose it as his provider." *See Ford*, 477 S.W.3d at 331 (citing *Ford*, 444 S.W.3d at 190).

In *Ford*, this Court noted that, unlike the facts before the Supreme Court in *United States v. Jones*, ___ U.S. ___, 132 S.Ct. 945, 948 181 L.Ed.2d 911 (2012), there was no GPS device and no physical trespass. *See*

[6] *See* Appellant's Ground # 2.

Ford, 477 S.W.3d at 333. Finally, this Court noted in *Ford* that "only short-term CSLI was acquired." *See Ford*, 477 S.W.3d at 333.

(c) **Application of Law to the Present Case.**

In the present case, Sims could not establish any violation of article 18.21, § 5(a) for the same or similar reasons in *Ford*: (1) Sims neither owned nor possessed the records/location information that he sought to suppress. *See Ford*, 477 S.W.3d at 330. (2) Sims could not meet the reasonable-expectation-of-privacy test. *See id* at 331. In addition to these reasons, there was no physical trespass and no GPS device.[7] *See id* at 333.

Most significantly, here, "only short-term CSLI was acquired" by Sergeant Hill and the peace officers of the Lamar County Sheriff's Department. *See id* at 333 (reference to footnote omitted). Therefore, this Court need not be concerned, as in *Ford*, with long-term location information being acquired or with real-time location information being used to track the present movements of individuals in private locations. *See Ford*, 477 S.W.3d at 334. Those were not the facts here in *Sims*, 526 S.W.3d at 640-41.

[7] For that very reason, the appellant's reliance was misplaced on the factually-distinguishable case/authority of *State v. Jackson*, 464 S.W.3d 724 (Tex. Crim. App. 2015). *See* Appellant's Brief, pgs. 45-46.

(1) **“<u>Only Short-Term CSLI Was Acquired</u>.”**

In *Sims*, 526 S.W.3d at 640, the victim’s body was discovered early in the afternoon of December 18, 2014, and Sergeant Hill had procured and signed the “Emergency Situation Disclosure” at approximately 05:22PM and 05:49:52PM. *See* Appendix (State’s Exhibit 4B). Thereafter, any “ping” of the appellant’s cell phone would have acquired “only short-term CSLI,” a fact that had significance for this Court in *Ford*. *See Ford*, 477 S.W.3d at 333 (reference to footnote omitted).

“B]y using information from cell towers along a highway in Oklahoma,” *see Sims*, 526 S.W.3d at 641, officers learned that the appellant’s cell phone was somewhere at a truck stop in Sapulpa, Oklahoma. *See id*. Oklahoma officers located the victim’s vehicle in the parking lot of a motel, where Sims and Morrison were arrested peacefully at approximately 8:25 p.m. *See id*. Thus, “only short-term CSLI” was obtained by an officer (like Sergeant Hill) or other person (Michael W. in State’s Exhibit 4B) in an approximately three-and-a-half-hour period of time. *See Sims*, 526 S.W.3d at 640-641 (“[s]tarting around 5:00 p.m. that evening . . . arrested peacefully at approximately 8:25 p.m.).

(2) **<u>Sims Neither Owned Nor Possessed any CSLI</u>.**

With such short-term CSLI, *see Ford*, 477 S.W.3d at 333, Sims neither

owned nor possessed the records/location information, *see id* at 330, that he sought to exclude as evidence in his "various motions to suppress evidence." *See Sims*, 526 S.W.3d at 641. Under the reasoning in *Ford*, the court of appeals did not err in affirming the trial court's final judgment.

B. **This Court Should Affirm the Appellate Court's Ruling Because It Was Reasonably Supported by the Record and Was Correct on Another Theory of Law.**

As set forth above, the appellant (Sims) could not establish a violation of any provision of (1) the SCA or (2) Article 18.21 of the Texas Code of Criminal Procedure. Since Sims could not establish any violation for purposes of Article 38.23(a), this Court should affirm the appellate court's ruling because it was reasonably supported by the record and was correct on another theory of law applicable to the present case (i.e. no violation of either federal or state statute). *See State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006) (citing *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990)).

C. **Even Assuming a Violation, the Court of Appeals Did Not Err in Holding That Suppression Was Not Available to Criminal Defendants.**

Even assuming that Sims could establish a violation, if any, of either the federal or state statute, the Fifth Circuit has held that suppression was not a remedy for a violation of either the federal pen-trap statute or the Texas

Code of Criminal Procedure. *See United States v. Wallace*, 857 F.3d 685, 689 (5th Cir. 2017) (citing *United States v. Guerrero*, 768 F.3d 351, 358 (5th Cir. 2014), *cert. denied*, ___ U.S. ___, 135 S.Ct. 1548, 191 L.Ed.2d 643 (2015); *United States v. German*, 486 F.3d 849, 854 (5th Cir. 2007)). In its brief in the court below, the State cited these cases/authorities, and the court of appeals correctly followed *Wallace*, *Guerrero* and *German* as binding authorities. *See Sims*, 526 S.W.3d at 642. Accordingly, this Court should affirm the appellate court's ruling because it was reasonably supported by the record and was correct on another theory of law applicable to the present case. *See Dixon*, 206 S.W.3d at 590; *Romero*, 800 S.W.2d at 543.

In conclusion, the appellant's first ground of review should be overruled. The final judgment of the court of appeals should be affirmed.

REPLY TO GROUND NO. 2: THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE TRIAL COURT'S FINAL JUDGMENT OF CONVICTION BECAUSE THE APPELLANT (SIMS) COULD NOT MEET THE REASONABLE-EXPECTATION-OF-PRIVACY TEST.

A. **Introduction.**

In his second ground, the appellant (Sims) alleged that a person had a legitimate expectation of privacy in real-time tracking data regardless of whether he was in a private or public location, and that the court of appeals erred by holding to the contrary. *See* Appellant's Brief, pgs. 15, 53. As set forth above, however, this Court reasoned in *Ford* that the appellant could not meet the reasonable-expectation-of-privacy test, *see Ford*, 477 S.W.3d at 330-31, and that same rationale should equally apply here.

B. **Standard of Review: Reasonable Expectation of Privacy.**

The Fourth Amendment guaranteed "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." *See* U.S. Const. amend. IV. Searches conducted without a warrant were per se unreasonable, subject to certain "jealously and carefully drawn" exceptions. *See Ford*, 477 S.W.2d at 328 (citing *Jones v. United States*, 357 U.S. 493, 499, 78 S.Ct. 1253, 2 L.Ed.2d 1514 (1958)). A Fourth Amendment claim may be based on a trespass theory of search (one's own personal "effects" have been trespassed), or a privacy theory of search (one's own expectation of privacy was breached). *See Ford*, 477 S.W.3d at

328 (citing *United States v. Jones*, ___ U.S. ___, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012) (attachment of GPS tracking device to a vehicle, and subsequent use of that device to monitor vehicle's movements on public streets for 28 days, was search within meaning of Fourth Amendment); *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (government's monitoring of Katz's conversation violated the privacy upon which he justifiable relied while using the telephone booth)).

Application of the Fourth Amendment under the latter, privacy theory depends on whether the person invoking its protection can claim a "reasonable," or a "legitimate" expectation of privacy that has been invaded by government action. *See Ford*, 477 S.W.3d at 328 (citing *State v. Granville*, 423 S.W.3d 399, 405 (Tex. Crim. App. 2014)). That is, a person has "standing" to contend that a search or seizure was unreasonable under the privacy theory if (1) he has a subjective expectation of privacy in the place or object searched, and (2) society is prepared to recognize that expectation as "reasonable" or "legitimate." *See id*.

A "legitimate" expectation of privacy acknowledges the lawfulness of the person's "subjective" expectation of privacy. *See id* (citing *Granville*, 423 S.W.3d at 406). In *Granville*, this Court held that a citizen did not lose his reasonable expectation of privacy in the contents of his cell phone

merely because that cell phone was being stored in a jail property room. *See Granville*, 423 S.W.3d at 417. In *Riley v. California*, ___ U.S. ___, 134 S.Ct. 2473, 2493-94, 189 L.Ed.2d 430 (2014), the United States Supreme Court held that an individual indisputably has an expectation of privacy in the contents of his personal cell phone, such that the police generally may not, without a warrant, search digital information on a cell phone seized from an individual who had been arrested. *See id*. *See also Ford*, 477 S.W.3d at 329.

C. **Sims Could Not Meet the Reasonable-Expectation-of-Privacy Test.**

1. **Third-Party Doctrine in *Ford*, 477 S.W.3d at 329-334.**

In *Ford*, this Court reasoned that the Fourth Amendment did not prohibit the obtaining of information revealed to a third party, even if the information was revealed on the assumption that it would be used only for a limited purpose and the confidence placed in the third party would not be betrayed. *See Ford*, 477 S.W.3d at 329. In *Ford*, this Court explained that:

> The third-party doctrine had its roots in two United States Supreme Court cases that predate cellular telephones: *Smith v. Maryland*, 442 U.S. 735, 744, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979) (installation and use of a pen register by a telephone company does not constitute a "search" within the meaning of the Fourth Amendment), and *United States v. Miller*, 425 U.S. 435, 443, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976) (bank depositor has no legitimate expectation of privacy in financial information voluntarily conveyed to banks and exposed to their

> employees in the ordinary course of business). According to Professor LaFave, "the critical fact in both *Miller* and *Smith* was that the information was given to a third party for that party's use; in both cases, this information had to be disclosed for the telephone company or bank to provide the requested service." 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 2.6(f), at 927 (5th ed. 2012) (internal quotation marks omitted).

See Ford, 477 S.W.3d at 329.

In *Ford*, this Court held that the appellant "had no legitimate expectation of privacy in records held by a third-party cell-phone company identifying which cell-phone towers communicated with his cell phone at particular points in the past." *See id* at 330. *See also Olivas v. State*, 507 S.W.3d 446, 475 (Tex. App.--Fort Worth 2016, no pet.). First, this Court reasoned in *Ford* that, like the bank customer in *Miller* and the phone customer in *Smith*, the appellant neither owned nor possessed the records he sought to suppress. *See id*. Second, this Court reasoned in *Ford* that, like the bank customer in *Miller* and the phone customer in *Smith*, the appellant could not meet the reasonable-expectation-of-privacy test. *See Ford*, 477 S.W.3d at 331 (citing *United States v. Davis*, 785 F.3d 498, 511 (11th Cir. 2015) (en banc)).

In *Ford*, this Court explained that the appellant fairly manifested a subjective expectation of privacy: the incriminating evidence in this case was determined from records of *passive* activity on his cell phone. *See*

Ford, 477 S.W.3d at 331 (reference to footnote omitted). But, this Court further explained that this was "a distinction without a functional difference," as the appellant "voluntarily availed himself of AT&T's cellular service, which include[d] the ability to receive data sent to a subscriber's phone, when he chose it as his provider." *See id* (citing *Ford*, 444 S.W.3d at 190). As noted by the Eleventh Circuit, the unreasonableness of any subjective expectation of privacy in society's eyes "dooms [defendant's] position under *Katz*." *See Ford*, 477 S.W.3d at 331 (citing *Davis*, 785 F.3d at 511).

In *Ford*, this Court also explained that "cell users know that they must transmit signals to cell towers within range, that the cell tower functions as the equipment that connects the calls, that users when making or receiving calls are necessarily conveying or exposing to their service provider their general location within that cell tower's range, and that cell phone companies make records of cell tower usage." *See Ford*, 477 S.W.3d at 331-32. "Users are aware that cell phones do not work when they are outside the range of the provider company's cell tower network." *See Ford*, 477 S.W.3d at 332 (citing *Davis*, 785 F.3d at 511).

2. **Application of the Doctrine to the Present Case.**

As applied here, like the bank customer in *Miller* and the phone

customer in *Smith*, Sims could not meet the reasonable-expectation-of-privacy test. *See Ford*, 477 S.W.3d at 331 (citing *Davis*, 785 F.3d at 511). In the present case, Sims "had no legitimate expectation of privacy in records held by a third-party cell-phone company identifying which cell-phone towers communicated with his cell phone at particular points in the past." *See id* at 330; *Olivas*, 507 S.W.3d at 475. Here, Sims voluntarily availed himself of Verizon's cellular service, which included the ability to receive data sent to a subscriber's phone, when he chose it as his provider. *See Ford*, 477 S.W.3d at 331 (citing *Ford*, 444 S.W.3d at 190). *See also Sims*, 526 S.W.3d at 640, n. 1 (the phone itself was purchased, possessed, and used only by Sims).

Because Sims could not meet the reasonable-expectation-of-privacy test, his second ground of review should be overruled. The final judgment of the appellate court should be affirmed.

D. **Any Privacy Interest by Sims in a Public Place Should Be Subordinate to Society's Greater More Compelling Interest in Protecting the Public and in Apprehending Murder Suspects From Flight.**

In *Ford*, this Court acknowledged that Fourth Amendment concerns might be raised if real-time location information were used to track the present movements of individuals in private locations. *See Ford*, 477 S.W.3d at 334 (reference to footnote omitted); *Sims*, 526 S.W.3d at 644. In

Sims, however, the court of appeals made a distinction between private and public places by reasoning that "while there may be a legitimate expectation of privacy in real-time tracking data in *private* locations, the same tracking, when following a subject in *public* places, does not invade legitimate expectations of privacy. *See Sims*, 526 S.W.3d at 644 (italics in opinion).

By 2011, federal law mandated that cell phones provide enhanced location services whenever 911 services were accessed. *See United States v. Caraballo*, 963 F.Supp.2d 341, 360, n. 6 (D. Vt. 2013), *aff'd*, 831 F.3d 95 (2nd Cir. 2016). In *Caraballo*, the court also referenced 18 U.S.C. § 2702(c)(4) and held that Congress deemed it reasonable to subordinate any individual privacy interest in cell phone location information to society's more compelling interest in preventing an imminent threat of death or serious bodily injury. *See Caraballo*, 963 F.Supp.2d at 360.

In *Caraballo*, there was no reasonable dispute that the pinging of the appellant's cell phone was occasioned by an "exigent situation." *See Caraballo*, 963 F.Supp.2d at 362. At the time of the pinging in *Caraballo*, law enforcement personnel had reason to believe that whoever had committed an "execution style" crime had recently left the scene with the murder weapon. *See id.*

In the circumstances specific to the present case, law enforcement

personnel with the Lamar County Sheriff's Department were responding, like in the use of 911 services by a cell phone, were similarly responding to an "exigent situation," as in *Caraballo*. *See id*. In pinging the appellant's cell phone here, Sergeant Hill called a total of three law enforcement agencies in an attempt to locate the suspects (Sims and Morrison). *See* RR, Vol. 2, pg. 124. Those law enforcement agencies would have necessarily used public places, like highways, in an effort to locate the suspects.

Any individual privacy interest by the appellant (Sims) in a public place, like a highway, should be subordinate to society's more compelling interest in protecting the public from murder suspects and in apprehending them from flight, especially in an "exigent situation" like the present case. Therefore, the court of appeals did not err in concluding that Sims did not have a legitimate expectation of privacy of the location of his cell phone on a public highway or in a public parking lot. *See Sims*, 526 S.W.3d at 644. Any argument(s) by Sims to the contrary should fail. In conclusion, the appellant's two grounds should be overruled, and the judgment of the court of appeals should be affirmed.

PRAYER

WHEREFORE PREMISES CONSIDERED, the State of Texas prays that upon final argument and submission, this Court affirm the Court of Appeals' judgment in all respects, adjudge taxable court costs against the appellant and for such other and further relief, both at law and in equity, to which it may be justly and legally entitled.

Respectfully submitted,

Jeffrey W. Shell, *Attorney Pro Tem*
Attorney & Counselor at Law
P.O. Box 397
Rockwall, Texas 75087-0397
(214) 244-8480
(972) 204-6809 (fax)
jws0566@yahoo.com

By: s/Jeffrey w. shell
Jeffrey W. Shell
SBN# 18191660

Gary D. Young
Lamar County & District Attorney
Lamar County Courthouse
119 North Main
Paris, Texas 75460
(903) 737-2470
(903) 737-2455 (fax)

By: s/gary d. young
Gary D. Young
County and District Attorney
SBN# 00785298
ATTORNEYS FOR STATE OF TEXAS

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i)(3) of the Texas Rules of Appellate Procedure, the State's Brief on the Merits was a computer-generated document and contained 9918 words--not including the Appendix, if any. The undersigned attorney certified that he relied on the word count of the computer program, which was used to prepare this document.

s/gary d. young _____
GARY D. YOUNG
gyoung@co.lamar.tx.us

CERTIFICATE OF SERVICE

This is to certify that in accordance with Tex. R. App. P. 9.5, a true copy of the "State's Brief on the Merits" has been served on the 2nd day of May, 2018 upon the following:

Michael Mowla
P.O. Box 868
Cedar Hill, TX 75106
michael@mowlalaw.com

Stacey M. Soule
State Prosecuting Attorney
P.O. Box 13046
Austin, TX 78711-3046
information@spa.texas.gov

s/gary d. young
GARY D. YOUNG

APPENDIX

verizonwireless

EMERGENCY SITUATION DISCLOSURE

Phone: (800) 451-5242 Option "4" Fax: (800) 345-6720

Upon receipt of this completed form, Verizon Wireless may divulge records or other information to governmental entities in certain emergencies, pursuant to 18 U.S.C. §2702(b) (8) or §2702(c) (4) or its equivalent state law. Please complete this form and **immediately** fax it back to Verizon Wireless at 800-345-6720

Does this request potentially involve the danger of death or serious physical injury to a person, necessitating the immediate release of information relating to that emergency? ☑ YES ☐ NO

Case #:	1419934294
Analyst Name:	Robert W.
Date of Request:	12/18/2014 17:49 EST
RE:	MDN:9032490097

Type of Records Being Requested:

- ☐ Subscriber Information
- ☑ Location Information
- ☐ Incoming and outgoing calls to and from target phone. Includes time/date.
- ☐ SMS Detail - Phone numbers that text messages were sent and received from. Includes time/date.
- ☐ Internet Activity Destination IP addresses. Includes time/date.

Time Frame for Which Information is Requested: Current

**** The lat and long measurements for location information are defined solely from the Round Trip Delay measurement. They are best estimates and are not related to any GPS measurement. Measurements with a high confidence factor may be more accurate than measurements with a low confidence factor, but all measurements are best estimates available rather than precise location.*

Additional Comments and/or Information/Service Change Requests:

MDN:9037150949

Requesting Investigative or Law Enforcement Officer:

Name:	Sgt Hill	Rank/Title:	
Law Enforcement Agency:	Lamar Cnty Sheriff's Dept	Phone:	9037572400
Dispatcher / Badge Number (if applicable):		Fax:	9037830568
Address:	129 Brown Ave;; Paris, 75460		
Email Address:	Deputy Hill@co.Lamar.TX.us		

I certify that the foregoing is true and correct and understand that Verizon Wireless may rely upon this form to make an emergency disclosure to my law enforcement agency or governmental entity pursuant to 18 U.S.C. § 2702(b)(8) or § 2702(c)(4).

Requesting Officer Signature: [signature] Date: 12/18/14

All information contained herein should be considered confidential. If you have received this, please do not disclose, copy, or distribute to anyone other than the authorized governmental or law enforcement official.

September 3, 2013